

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edward Hughes	Team: Team # 3	CCRB Case #: 200600024	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 11/10/2005 5:35 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 5/10/2007	EO SOL 5/10/2007	
Date/Time CV Reported Tue, 01/03/2006 12:45 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 01/03/2006 12:45 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Sean Downes	03978	918975	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Maria Catalano	29615	928044	075 PCT
2. POM Angelo Baez	11631	896980	075 PCT
3. POM Lewis Ortiz	13761	899683	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Sean Downes	Abuse: Sgt. Sean Downes forcibly stopped § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
B.SGT Sean Downes	Abuse: Sgt. Sean Downes frisked § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
C.SGT Sean Downes	Abuse: Sgt. Sean Downes searched § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
D.SGT Sean Downes	Abuse: Sgt. Sean Downes entered and searched the basement of § 87(2)(b) in Brooklyn.	§ 87(2)(b)

Synopsis

§ 87(2)(b) and § 87(2)(b) filed this complaint in-person at the CCRB on January 3, 2006. On November 10, 2005, at approximately 5:30PM, Sgt. Sean Downes forcibly stopped § 87(2)(b) on the first-floor hallway of § 87(2)(b) in Brooklyn. (Allegation A) While attempting to control § 87(2)(b) entered the hallway and was also stopped by Sgt. Downes. (within allegation A) § 87(2)(b) and § 87(2)(b) were frisked and searched and § 87(2)(b) was handcuffed. (Allegations B and C) Sgt. Downes then allegedly took a set of keys from § 87(2)(b) and opened a locked door that leads to § 87(2)(b)'s basement apartment and searched that area. (Allegation D) After exiting the basement, Sgt. Downes released § 87(2)(b) from the handcuffs and left the building.

§ 87(2)(g)

§ 87(2)(b) This case was filed at the CCRB two months following the incident. The case was additionally delayed in order to obtain results of the latent print unit's analysis of evidence gathered by IAB's Police Impersonation Unit, which lasted an additional two months.

Summary of Complaint

Immediately following the incident, § 87(2)(b) and § 87(2)(b) reported this incident at the 75th Precinct and a criminal complaint report for police impersonation robbery was filed. Complaint number § 87(2)(b) indicates that § 87(2)(b) and § 87(2)(b) reported that \$975 and a cellphone were stolen by a 5'10", 210 lbs, white, male known as "Sergeant" and a white or Hispanic female standing 5'6" tall and weighing 125 lbs. The report's narrative indicates that Sgt. Downes and Officer Catalano identified themselves with a gold police badge before frisking and searching the victims and handcuffing § 87(2)(b). One of the officers allegedly took the keys from § 87(2)(b) and opened the door to the basement and remained there for approximately 5-7 minutes. When the victim asked the officer if he was from the 75th Precinct, the officer allegedly responded, "Want a ride?" The complaint narrative is consistent with the victims' testimonies. The report indicates that the Crime Scene Unit responded to § 87(2)(b)'s building to investigate the robbery complaint. (Encl.17)

§ 87(2)(b)

§ 87(2)(b) is § 87(2)(b) in Brooklyn. § 87(2)(b) is a 6'0" tall, 180 lbs., § 87(2)(b) old, black, male who resides at § 87(2)(b). § 87(2)(b) was interviewed at the CCRB on January 3, 2006 (Encl.6).

On November 10, 2005, § 87(2)(b) and § 87(2)(b) were renovating a bathroom in the basement apartment of § 87(2)(b) in Brooklyn. The two men drove to a hardware store to get supplies and returned to the building at approximately 5:30PM. § 87(2)(b) was wearing blue sweatpants without pockets and a sweatshirt-style jacket. § 87(2)(b) was wearing dark pants, with a red T-shirt and a jacket. § 87(2)(b) and § 87(2)(b) entered the building and walked to the basement door at the rear of the first floor hallway. § 87(2)(b) reached the door first and began descending the stairs and allowed the basement door to close behind him. The basement door automatically locks, when the door is closed. Before § 87(2)(b) reached the basement door, he saw PO1, described as a 5'10" tall, 225lbs., white, male in plainclothes, identified through investigation as Sgt. Sean Downes of the 75th Precinct, rush into the building shouting, "Police." PO1 approached § 87(2)(b) and pushed him against the hallway wall with both hands in § 87(2)(b)'s chest and right shoulder. The left side of § 87(2)(b)'s head hit the wall. The officer instructed § 87(2)(b) to put his hands up and to spread his legs. § 87(2)(b) tried to comply with his instructions as the officer continued to push him towards the wall. PO1 then frisked § 87(2)(b) starting at his wrists, up his arms and down to his feet. PO1 also frisked § 87(2)(b)'s waistband. PO1 removed § 87(2)(b)'s cellphone and wallet from his jacket pocket and threw them on the floor. The officer then pushed § 87(2)(b) toward the front of the building and made him walk down the hall. § 87(2)(b) then noticed PO2, described as a 5'6" tall, 135lbs., white or Hispanic, female, standing in the hallway. At this point, § 87(2)(b) opened the door from the basement and stepped into the hallway. PO1 grabbed § 87(2)(b) by the arm and pushed him against the wall and frisked and searched § 87(2)(b). The officer then reached into § 87(2)(b)'s pockets and removed his wallet, keys and papers and threw them on the floor. § 87(2)(b) stated that PO1 repeatedly said, "Where's the stuff?" while searching § 87(2)(b). The officer also stated, "You know what I'm here for." § 87(2)(b) informed the officers that he owned the building and offered to prove this by finding a tenant. PO1 told PO2 to frisk § 87(2)(b).

§ 87(2)(b) again and then to handcuff him. PO1 told § 87(2)(b) to sit on the floor and put his knees to his chest. The tenant of apartment # 1B, § 87(2)(b) opened his door and said, "Hey that's my landlord." The officer instructed the tenant to go back into his apartment. § 87(2)(b) alleged that PO1 continued to push § 87(2)(b) into the walls of the narrow hallway for approximately 10 minutes. PO1 asked § 87(2)(b) to tell him who was in the basement and "Where the stuff was." The officer also inquired as to why the door to the basement was locked and demanded that § 87(2)(b) give him the key to open the door. § 87(2)(b) told the officer that he would prefer being taken to the precinct since he had done nothing wrong. § 87(2)(b) initially refused to give the officer the key, but then was "coerced because the officer was aggressive." PO1 then opened the door and went into the basement. § 87(2)(b) stated that he could hear PO1 "tossing things around in the basement." PO1 returned from the basement and instructed PO2 to help § 87(2)(b) stand up. PO1 then allegedly pointed his finger in § 87(2)(b)'s face and stated, "Next time I tell you to shut up and sit down, you do it properly." PO1 then released § 87(2)(b) from the handcuffs and rushed out of the building. § 87(2)(b) followed after the officer and asked for his name and shield number. The officer flashed his badge in front of § 87(2)(b)'s face and said, "3978." The officer then quickly left the apartment, then abruptly stopped and ran towards § 87(2)(b). The officer came "chest-to-chest" with § 87(2)(b) and asked, "Do you need a ride?" § 87(2)(b) decided to back down and let the officer leave. § 87(2)(b) later told § 87(2)(b) that the officers left in a dark unmarked Ford. After the officers left the apartment, § 87(2)(b) discovered that \$975 was missing from the basement. This allegation was investigated by IAB under log # 05-34819. § 87(2)(b) and § 87(2)(b) went to the 75th Precinct station house to file a complaint, which was initially handled as a police impersonation robbery. § 87(2)(b) and § 87(2)(b) also were taken to the IAB Police Impersonation Unit in Queens, where they viewed photographs of known police impersonators. The men did not identify the subject from these photographs. § 87(2)(b) stated that he was presented with photographs of officers from the 75th Precinct and identified Sgt. Sean Downes as PO1.

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on January 3, 2006. (Encl. 7) On April 26, 2006, the investigator visited § 87(2)(b) in Brooklyn and obtained an additional statement from § 87(2)(b) (Encl. 7E) § 87(2)(b) demonstrated how the incident occurred and led the investigator on a tour of the area of the incident. § 87(2)(b) also demonstrated how the door to the basement locks automatically when closed. The investigator took photographs of the apartment's hallway and basement, as well as of the position § 87(2)(b) was placed against the wall. These photographs are enclosed in the casefile. (Encl. 1A-F) § 87(2)(b) is a 6'2" tall, 190lbs., § 87(2)(b) old, black, male who resides at § 87(2)(b). § 87(2)(b)'s statements were consistent and have been combined below, with any discrepancies are noted. § 87(2)(b)'s statement begins with his arrival in the hallway, after § 87(2)(b) was initially stopped. His statement was consistent with § 87(2)(b)'s and any discrepancies are noted below.

§ 87(2)(b) and § 87(2)(b) had driven to a hardware store in Flatbush in § 87(2)(b)'s Nissan mini-van. They drove north on Pennsylvania Avenue towards the store, but turned around and returned to § 87(2)(b) after they realized that the store would be closed. They had only driven approximately four blocks away. § 87(2)(b) parked the vehicle on the west side of Pennsylvania Avenue, north of § 87(2)(b). § 87(2)(b) exited the vehicle and § 87(2)(b) remained inside. When § 87(2)(b) entered the building, he realized that he did not have the key to the basement, so he returned outside to get § 87(2)(b) to help him. § 87(2)(b) exited his vehicle and walked into § 87(2)(b) with § 87(2)(b) and the two men walked to the rear of the hallway. § 87(2)(b) unlocked the basement door and § 87(2)(b) descended the stairs, while § 87(2)(b) remained in the first floor hallway. § 87(2)(b) reached the third-from-last step, when he heard a series of loud thumps coming from the first floor hallway. § 87(2)(b) thought § 87(2)(b) might have fallen down, so he rushed upstairs to help him. § 87(2)(b) stated that he asked the officer what was going on and PO1 said, "Shut the fuck up." PO1 also shined his flashlight into § 87(2)(b)'s mouth and looked in. § 87(2)(b) stated that PO1 told § 87(2)(b) to, "Open this fucking door or I'll kick it down." The officer was referring to the basement door. The officer appeared ready to kick the door, so § 87(2)(b) rushed to get the keys to PO1 before the officer kicked the door. The officer opened the door and went downstairs. § 87(2)(b) stated that the door to the basement closed behind the officer, so he could not hear what the officer was doing during the ten minutes he was in the basement. When the officer returned, he told § 87(2)(b) to "Get the fuck up." The officer released § 87(2)(b) from the handcuffs and abruptly left. § 87(2)(b) stated that later that night police investigators dusted the hallway and basement of § 87(2)(b) for fingerprints.

Results of Investigation

Civilian Witness Statement

§ 87(2)(b)

On July 6, 2006, § 87(2)(b) provided a statement to the CCRB via telephone (Encl.8). § 87(2)(b) is a § 87(2)(b) old, black male who resides at § 87(2)(b) in Brooklyn. § 87(2)(g)

§ 87(2)(b)'s apartment is situated at the end of the first-floor hallway of § 87(2)(b) just beyond the door leading to the basement stairs. At the time of the incident, § 87(2)(b) was in his kitchen, which is approximately 5-6 feet from the entrance to his apartment. Just prior to 5:30PM, § 87(2)(b) heard § 87(2)(b) and § 87(2)(b) leave the building after they had spent the day working in the basement. Shortly after he thought they had left, § 87(2)(b) heard a loud banging noise that he assumed was the basement door closing. When he heard a second loud thump, he began to pay closer attention and heard a male yell, "Where is it?" This male was determined through investigation to be Sgt. Downes. § 87(2)(b) who is familiar with § 87(2)(b)'s distinctive voice, heard § 87(2)(b) say, "I don't have anything." § 87(2)(b) did not hear Sgt. Downes identify himself as an officer, so he thought § 87(2)(b) might be getting robbed. Fearing this, § 87(2)(b) looked through the peephole of his door and saw § 87(2)(b) standing against the wall to the right of the basement door with his arms above his head and holding the railings of the stairs to the second floor. § 87(2)(b) saw Sgt. Downes holding § 87(2)(b) against the wall. § 87(2)(b) also noticed that § 87(2)(b) and a female, determined through investigation to be Officer Maria Catalano, were also in the hallway. Although he did not recall seeing the officers' badges displayed, he recognized at this point that they were officers so he decided to exit his apartment and walk past the officers while taking out his garbage. § 87(2)(b) spoke to § 87(2)(b) as he passed to indicate to the officers that he knew him. Sgt. Downes made § 87(2)(b) sit on the floor with his back against the wall and frisked § 87(2)(b). § 87(2)(b) believed that Sgt. Downes removed everything from § 87(2)(b)'s pockets because there were several objects strewn on the floor near him, but § 87(2)(b) did not actually witness the alleged search. Sgt. Downes then went down to the basement for approximately one to three minutes. § 87(2)(b) did not see how the officer opened the door to the basement and stated that he could not hear the officer while he was gone. § 87(2)(b) did not see either of the officers push § 87(2)(b) or § 87(2)(b) but explained that he did not witness the incident until after he heard the loud thump. § 87(2)(b) did not hear either officer use profanity. § 87(2)(b) requested the officer's shield number, but Sgt. Downes refused to provide it.

Identification of Officers Interviewed

§ 87(2)(b) and § 87(2)(b) stated that they were brought to the IAB Police Impersonation Unit immediately after the incident and viewed photos of known police impersonators as well as officers from the 75th Precinct. § 87(2)(b) stated that he identified Sgt. Sean Downes of the 75th Precinct from the photographs. The investigator spoke to Capt. Daniel Mickulas of IAB Group 34 who confirmed that Sgt. Downes was identified in this manner. Sgt. Downes' memo book confirmed that he was on duty and in the area at the time of the incident and was working with Officer Maria Catalano. During his interview, Sgt. Downes confirmed his presence at the scene and identified Officer Angelo Baez and Officer Lewis Ortiz as the observation post for the SNEU team.

Officer Statements

Sgt. Sean Downes and Officer Maria Catalano

Officer Catalano prepared a stop, question and frisk report which indicates that § 87(2)(b) was stopped and frisked for suspicion of criminal possession of a weapon. Officer Catalano indicated that a description of § 87(2)(b) and furtive movements led to the stop. The stop, question and frisk report also specifies that § 87(2)(b) was frisked due to refusing to comply with the officers' directions and was searched due to the discovery of a hard object. Officer Catalano also noted that § 87(2)(b) provided evasive, false or inconsistent responses to questions and changed direction upon seeing the officers. (Encl. 12) Crime Scene Unit prepared a report for this incident on November 10, 2005. (Encl.18)

Officer Downes and Officer Catalano were interviewed at the CCRB on February 17, 2006. Officer Downes is a 5'11" tall, 230 lbs., § 87(2)(b) old, white male, with brown hair and green eyes. Officer Catalano is a 5'3" tall, 125 lbs., § 87(2)(b) old, white female with brown hair and brown eyes. Both officers were assigned to the 75th Precinct SNEU team at the time of this incident and Sgt. Downes had been the team's supervisor for approximately one week and Officer Catalano had been assigned to the team for approximately one month prior to the incident. Sgt. Downes had previously been assigned to the Narcotics Division. Sgt. Downes did not have a memo book entry regarding this incident. Officer Catalano noted the stop of § 87(2)(b) and § 87(2)(b) and that stop, question and frisk reports were prepared. § 87(2)(g)

On November 10, 2005, Sgt. Downes and Officer Catalano were in plainclothes and assigned to an unmarked vehicle and acting as the chase car during a SNEU operation. Sgt. Downes was operating the vehicle and Officer Catalano was seated in the front passenger's seat. Sgt. Downes stated that the officers were traveling southbound on Pennsylvania Avenue in Brooklyn, north of Hegeman Street. Officer Catalano stated that the officers were traveling northbound on Pennsylvania Avenue. The observation post was set up across from a bodega at the corner of Hegeman Street and Pennsylvania Avenue, which is a "drug prone location." Sgt. Downes stated that he had assisted in an arrest at the location on November 9, 2005 and knew of several other arrests at that exact location. At approximately 5:30PM, the officers received a description transmitted from the observation post via point-to-point radio. Sgt. Downes recalled that the observation post consisted of Officer Angelo Baez and Officer Lewis Ortiz. Officer Catalano believed that the radio transmission described two black males and recalled that the description precisely matched § 87(2)(b) and § 87(2)(b) who were seen walking northbound on the east sidewalk of Pennsylvania Avenue seconds after the radio transmission was received. Officer Catalano stated that there were many other individuals on the sidewalk but no one else matched the description given. She also stated that the radio transmission implied an observed narcotics transaction and did not include a description of § 87(2)(b) and § 87(2)(b)'s observed actions. Sgt. Downes stated that the radio transmission indicated that a "male black wearing black jeans entered and exited the location without a bag in his hand and did not appear to have purchased anything." Asked to clarify the significance of this, Sgt. Downes stated that this was suspicious because the man was "in the bodega less than two minutes and did not have anything in his hands to indicate that he had purchased a soda, purchased a bag of chips, etc." Sgt. Downes recalled that they observed § 87(2)(b) crossing Pennsylvania Avenue one minute after the officers received the radio transmission. Sgt. Downes double-parked on Pennsylvania Avenue and the officers exited the vehicle and attempted to stop the individual, or individuals as Officer Catalano recalled. Sgt. Downes stated that he exited the vehicle and said, "Police. Hold up one second please," when he was approximately 15 feet away from § 87(2)(b). § 87(2)(b) immediately fled towards § 87(2)(b). Sgt. Downes again said, "Police. I need a moment of your time please, sir" as he followed after § 87(2)(b). However, Officer Catalano stated that the two men fled immediately after the officers exited their vehicle with their shields displayed, which raised the officers' suspicion of the two individuals. The officers chased after the suspect or suspects, but were delayed when they reached the front entrance of the building because the door locked after § 87(2)(b) entered the building. The officers briefly lost sight of § 87(2)(b) at this time because the steel door only has a small window. A young boy exited the building, which allowed the officers to gain entry to the first floor hallway of the apartment building. Both officers stated that § 87(2)(b) was attempting to open the basement door with his keys and Officer Catalano stated that § 87(2)(b) was standing behind him. Sgt. Downes stated that § 87(2)(b) was able to open the door and get halfway through the door and also attempted to conceal half of his body behind the door. Officer Catalano did not describe this detail, but stated that both men became very confrontational as the officers approached them. Sgt. Downes grabbed § 87(2)(b) with both hands and pulled him out of the doorway and the door closed. § 87(2)(b) resisted by "flailing his arms" and trying to "go one way while Sgt. Downes wanted to go the other." § 87(2)(b) also became loud and was screaming. Sgt. Downes did not explain why he stopped § 87(2)(b) until the end of the encounter. As Sgt. Downes pulled § 87(2)(b) away from the door, he noticed bulges in his pockets. At this point, Sgt. Downes stated that a second man, later determined to be § 87(2)(b), "appeared to the right of the door in the hallway." Sgt. Downes did not state that § 87(2)(b) entered from the basement. § 87(2)(b) allegedly "got in the way of dealing with § 87(2)(b) by standing in between" Sgt. Downes and § 87(2)(b). Sgt. Downes tried to push § 87(2)(b) aside. § 87(2)(b) began screaming and acting combative so Sgt. Downes decided to handcuff him and frisk him. Given that § 87(2)(b) tried to conceal half of his body behind the door, Sgt. Downes suspected that he might have had a knife. Following the frisk, Sgt. Downes also searched § 87(2)(b) because he had hard objects in his pockets. Sgt. Downes described that the bulge "felt like a hard object" and recalled that he removed cellphones and a set of keys from § 87(2)(b)'s pockets. Officer Catalano stated that Sgt. Downes frisked § 87(2)(b) and § 87(2)(b) only in places where they could keep a

weapon, specifically their chests, their waistbands and under their arms. She also recalled Sgt. Downes mentioning an object in one of the individual's pockets but she did not recall him removing anything from their pockets. She did not recall observing bulges on either individual. Officer Catalano stated that she handcuffed § 87(2)(b) and asked him to sit on the ground. She stated that § 87(2)(b) was handcuffed to ensure her safety because he was confrontational, flailing his arms and loud. Officer Catalano stated that Sgt. Downes frisked § 87(2)(b) as well, but did not explain to her why he conducted this frisk. Sgt. Downes then requested the keys to the basement door and § 87(2)(b) provided them. Sgt. Downes also stated that he took § 87(2)(b)'s keys because he "didn't want to get punched in the face with keys." Officer Catalano stated that Sgt. Downes opened the door and went to the basement for approximately 15-20 seconds. She assumed that Sgt. Downes was searching for either contraband or weapons. Sgt. Downes stated that he entered the stairwell and walked halfway down the stairs but did not open the door at the base of the stairs. He stated that he was in the stairwell for one or two minutes and was trying to determine if the men discarded anything in the stairwell. When Sgt. Downes returned from the basement he released § 87(2)(b) from the handcuffs and instructed Officer Catalano to complete stop, question and frisk reports for both individuals. Sgt. Downes stated that § 87(2)(b) was "still acting very irrationally" and continually asked for the names and shield numbers of both officers. The officers provided this information to § 87(2)(b) and Sgt. Downes stated that he even watched § 87(2)(b) write this information on a piece of paper. After the stop, question and frisk reports were completed, the officers left the building. At the end of the interview, Sgt. Downes stated that it was not obvious that § 87(2)(b) was the man described. He stated that he only wanted to hear a valid reason why § 87(2)(b) was there and then he "probably would have been on his way." Sgt. Downes stated that § 87(2)(b)'s flight raised his suspicion prompting him to chase after him and it was not based on the observation post's radio transmission at that point.

Officer Angelo Baez and Officer Lewis Ortiz

Officer Baez and Officer Ortiz were interviewed at the CCRB on March 9, 2006. The officers' statements were consistent and any discrepancies are noted below. Officer Baez is a 5'7" tall, 175 lbs., § 87(2)(b) old, Hispanic male and Officer Ortiz is a 5'5" tall, 210lbs, § 87(2)(b) old, Hispanic male. Both officers were assigned to the 75th Precinct SNEU team at the time of this incident.

On November 10, 2005, Officer Baez and Officer Ortiz were working as the observation post for a 75th Precinct SNEU team led by Sgt. Downes. The officers were in plainclothes and assigned to an unmarked vehicle. The officers were responsible for observing a target location for narcotics transactions and then relaying the observed actions and descriptions of the suspects to the rest of their SNEU team, including Sgt. Downes. Neither officer recalled the alleged observed transaction that led to this incident. Officer Baez stated that he did not broadcast a description of any individual that "entered and exited a location and left empty-handed." Officer Baez asserted that he did not broadcast any descriptions without observing a "clear-cut" transaction. Officer Ortiz had been a member of the 75th Precinct for fifteen years and a member of the SNEU team for over a year at the time of this incident. Officer Baez had been assigned to SNEU for approximately a year and one month at the time of this incident.

Police Documents

The stop, question and frisk report index for the 75th Precinct indicates that Officer Catalano prepared two stop and frisk reports for § 87(2)(b) at 7:30PM on November 10, 2005. (Encl. 16) The Crime Scene Unit (CSU) conducted an investigation into the allegation that § 87(2)(b)'s basement apartment was entered and rummaged through resulting in a missing cellphone and \$975. The CSU Report indicates that photographs were taken of thirteen different views of § 87(2)(b)'s apartment. These photographs were not forwarded to the CCRB with this report. Additionally, the report includes a map of § 87(2)(b)'s basement apartment. The CSU report states that all pertinent surfaces were processed for latent fingerprints and that a fingerprint was pulled from the case of a compact disc. Det. Corletto of IAB Group 34 forwarded a report outlining the results of the CSU investigation that were analyzed by the Latent Print Unit. The report indicates that Det. Eldridge of the Latent Print Unit did not determine a match from the print recovered in § 87(2)(b)'s basement. (Encl. 18C)

Civilian Criminal Conviction History

The investigator searched BADS and determined that § 87(2)(b) and § 87(2)(b) do not have any criminal convictions in the last five years.

Subject Officer's CCRB History

Sgt. Sean Downes does not have any substantiated complaints during his nine-year tenure with the NYPD. (Encl.3)

Conclusions and Recommendations

Subject Officer Identification

§ 87(2)(b) identified Sgt. Downes by name, stating that he identified the officer from a photo series presented by the IAB Police Impersonation Unit. Sgt. Downes' memo book confirmed that he was on duty and in the area of § 87(2)(b)'s apartment at the time of the incident. Upon interviewing Sgt. Downes, the officer admitted that he stopped § 87(2)(b) inside § 87(2)(b) on November 10, 2005, frisked and searched him. He also stated that he was the sole officer who went down the basement stairs.

Undisputed and Disputed Facts

It is undisputed that § 87(2)(b) and § 87(2)(b) were forcibly stopped, questioned, frisked and searched in the hallway of § 87(2)(b). It is undisputed that § 87(2)(b) was handcuffed. It is also undisputed that Sgt. Downes opened the basement door using keys that he obtained from § 87(2)(b) and that he crossed the threshold of that door. It is not disputed that § 87(2)(b) requested Sgt. Downes' name and shield number and that Sgt. Downes provided the shield number.

It is disputed that § 87(2)(b) and § 87(2)(b) were at the bodega at the corner of Hegeman Street and Pennsylvania Avenue prior to being stopped. The details of the radio transmission received are also in dispute between Officer Catalano and Sgt. Downes. It is disputed whether § 87(2)(b) or § 87(2)(b) encountered the police outside of the apartment building. It is in dispute whether § 87(2)(b) and § 87(2)(b) were together or separate when the officers initiated the encounter. Also in dispute is whether the officers identified themselves upon approach and whether § 87(2)(b) attempted to conceal his body behind the basement door. It is disputed that Sgt. Downes provided his name to § 87(2)(b), § 87(2)(b) and § 87(2)(b) are in dispute as to whether Sgt. Downes cursed during the encounter.

Civilian Credibility

§ 87(2)(g)
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Officer Credibility

§ 87(2)(g)
§ 87(2)(g) Sgt. Downes explained that he frisked and search § 87(2)(b) because of a bulge and hard objects in his pocket. However, he could not describe the size or shape of the bulge but stated that he believed it could be a knife. It was determined that § 87(2)(b) had a cellphone and keys in his pocket, § 87(2)(g). After describing what he felt during the frisk, Sgt. Downes later stated that he did not know whether he or his partner actually frisked the individuals. Sgt. Downes also stated that he took § 87(2)(b)'s keys because he did not want to be punched in the face with keys and then later admitted that he took the keys to open the basement door.
§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(g) Officer Baez and Officer Ortiz stated that they did not recall the incident. § 87(2)(g)

Allegations Not Pleaded

Only § 87(2)(b) alleged that Sgt. Downes cursed at § 87(2)(b) but the specific discourteous language alleged varied between § 87(2)(b)'s statements. Additionally, since § 87(2)(b) the alleged victim of the discourtesy, did not mention this allegation, an allegation of discourtesy is not being pleaded against Sgt. Downes. § 87(2)(b) stated that he requested the male officer's shield number and provided the four numbers that the officer quickly said to him. It was confirmed that the number provided matched Sgt. Downes actual shield number. Therefore, an allegation of refusal to provide shield number is not being pleaded against Sgt. Downes.

Allegation A: Sgt. Sean Downes forcibly stopped § 87(2)(b) and § 87(2)(b)

Allegation B: Sgt. Sean Downes frisked § 87(2)(b) and § 87(2)(b)

Allegation C: Sgt. Sean Downes searched § 87(2)(b) and § 87(2)(b)

Allegation D: Sgt. Sean Downes entered and searched the basement of § 87(2)(b) in Brooklyn.

Sgt. Downes stated that he initially approached § 87(2)(b) merely to request an explanation for his presence at a location because § 87(2)(b) allegedly was observed "entering and exiting a location without buying anything." Sgt. Downes believed that this was suspicious, but denied that he believed he had reasonable suspicion that criminality was afoot at that moment. Instead, Sgt. Downes implied that this information allowed him to approach the civilian for a request for information, which is a level I stop, and that only the civilian's flight elevated the officer's suspicion to a level that would justify a forcible stop, which is categorized as a level III. *People v. DeBour* holds that an officer can approach a civilian at level one stop when there is "some objective credible reason that is not indicative of criminality." (Encl. 2A) § 87(2)(g)

After pursuing § 87(2)(b) and encountering § 87(2)(b) Sgt. Downes admitted that he frisked and searched both individuals. However, other than his vague description of a bulge and hard object on the individuals, which Officer Catalano did not corroborate and ultimately proved to be innocuous, Sgt. Downes was not able to articulate his reasons for fearing that § 87(2)(b) and § 87(2)(b) might have a weapon. § 87(2)(g)

After searching § 87(2)(b) and § 87(2)(b) absent probable cause and determining that neither individual possessed contraband or weapons, Sgt. Downes requested § 87(2)(b)'s keys to open the locked door and search a non-public area for weapons or contraband that potentially were discarded in that area. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: